

## **SCHEDULE 20 - EMS INTERNATIONAL COURIER TERMS AND CONDITIONS**

### **1 Introduction**

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- 1.1 These special service terms and conditions are supplementary to the Australia Post Terms and Conditions and to the extent that any aspect of this special service is not expressly included herein, the Australia Post Terms and Conditions apply.
- 1.2 These special service terms and conditions apply when:
  - 1.2.1 a customer makes a written application to use the special service in or on a form prescribed by Australia Post for that purpose;
  - 1.2.2 Australia Post accepts that application; and
  - 1.2.3 the customer pays the fee, charge, premium, rate or price charged by Australia Post for the special service.

### **2 Interpretation**

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- 2.1 Except as where expressly defined, all words and phrases used in this Agreement shall have the same meaning if any, given to them in the *Australian Postal Corporation Act 1989* and in the Australia Post Terms and Conditions provided, however, that where there is any inconsistency, the meaning shall be as defined in this Agreement to the extent of that inconsistency.
- 2.2 In this Agreement unless the contrary intention appears:
  - 2.2.1 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
  - 2.2.2 words importing a gender include any other gender; and
  - 2.2.3 words in the singular number include the plural and words in the plural number include the singular.
- 2.3 "**agreement**" means an agreement between Australia Post and a customer pursuant to clause 1.2.
- 2.4 "**consignor**" shall mean any person, company or corporation who –
  - 2.4.1 delivers goods, or on whose behalf the goods are delivered to Australia Post for the provision of services; or
  - 2.4.2 has or claims to have an interest of any kind in the goods;  
and the person signing this Agreement shall be deemed to be, or be, the authorised agent of the consignor.
- 2.5 "**goods**" shall include any receptacle, container, packaging material, pallet(s) or other item attached to or delivered with the goods for the provision of services by Australia Post.
- 2.6 "**service**" means the EMS International Courier Service which is a special service providing:
  - 2.6.1 priority, door-to-door international courier delivery for letters, documents and merchandise through the Express Courier International Service; and

2.6.2 priority delivery for letter, documents and merchandise through the Express Post International – Parcels Service.

### **3 Australia Post is not a Common Carrier**

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3.1 Australia Post is not, and shall not be liable as, a Common Carrier. The services provided pursuant to this Agreement are subject to the terms and conditions contained herein which are not negotiable. Australia Post reserves the right to refuse to provide services to any person, company or corporation or to accept goods of any particular class, character or nature whatsoever at its sole discretion.

### **4 Consignor's obligations and acknowledgments**

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4.1 The consignor warrants that in agreeing to the terms and conditions of carriage it is, or has the authority of, and is the agent of, the person or persons owning or having any interest in the goods or any part thereof.

4.2 Without prejudice to the generality of clause 4.1, the consignor undertakes to indemnify Australia Post against any liability whatsoever arising in respect of the goods to any person (other than the Consignor) who claims to have, who has or who may hereafter have any interest in the goods or any part thereof.

4.3 The consignor warrants that it has complied with all laws and Regulations, both state and federal, relating to the consigning, labelling, packaging, carriage, storage and delivery of the goods.

4.4 The consignor warrants that all applicable customs, import, export and other laws and Regulations of all countries to, from, through or over which the consignment may pass, have been complied with. Australia Post is authorised, but is under no obligation, to complete on the Consignor's behalf any documents required to comply with such laws and Regulations, and to act as the Consignor's forwarding agent for customs and export control purposes. The Consignor certifies that all information provided to Australia Post orally, or set forth in this Air Bill and any other documents, is accurate and complete.

4.5 The consignor acknowledges that Australia Post may:

4.5.1 open and inspect any document, parcel, package, container or other receptacle in which the goods are placed to determine their nature, value, origin, destination or any other matter reasonably necessary for the effective provision of services by Australia Post; and

4.5.2 abandon and/or release any item consigned by the consignor to Australia Post which Australia Post has declared to be unacceptable or which the Consignor has undervalued for customs purposes or mis-described, whether intentionally or otherwise, without incurring any liability whatsoever to the Consignor and the Consignor will indemnify Australia Post against all claims, damages, fines and expenses arising there from.

4.6 The consignor shall be liable, and indemnify Australia Post, for any costs, expenses, damage or loss arising from:

4.6.1 non-compliance by the Consignor with all or any of the laws referred to in clause 4.3 and 4.4;

4.6.2 the carriage of goods of the nature described in clause 5.1;

- 4.6.3 any customs duty, excise duty or other costs which may be imposed by Customs in respect of the goods; and
- 4.6.4 compliance by Australia Post with any order or requirement imposed by any railway, shipping, customs warehouse, harbour, dock or any other authority; and any other necessary or incidental charges or expenses arising from the provision of services by Australia Post which are not included in the rates charged by Australia Post.

## 5 Dangerous Goods

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- 5.1 Where the goods are, or may become, dangerous, noxious, inflammable, offensive in or any manner liable to cause injury or damage to any person or property, the Consignor shall ensure that a full description of the goods in writing is given to Australia Post prior to the provision of services, disclosing the nature and value of the goods and stating that the goods are safely and adequately packed in view of such nature and the risks ordinarily associated with the carriage and storage of such goods.
- 5.2 Australia Post reserves the right to refuse to carry such goods in accordance with clause 3, but if, in its sole discretion, Australia Post decides to carry such goods, then Australia Post may –
  - 5.2.1 require such goods to be repacked to comply with requirements set out in the Australia Post Terms and Conditions;
  - 5.2.2 impose additional charges for the carriage of the goods of the nature referred to in clause 5.1; and
  - 5.2.3 destroy, dispose of, abandon or render harmless without compensation to the Consignor any goods which, in the opinion of Australia Post:
    - (i) are, or are liable to become during carriage, of a dangerous, inflammable, explosive, volatile, offensive or damaging nature; or
    - (ii) have not been declared and or packed in accordance with clause 5.1 or repacked in accordance with clause 5.2.1.

## 6 Extra Cover

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- 6.1 In conjunction with this service, Australia Post may offer the Extra Cover Service to the Consignor, up to a maximum amount of \$5000 (Australian currency). Australia Post shall be liable to the Consignor only for any loss or damage to the goods resulting from the provision of services to the limit of such cover.

## 7 Limitation of liability – Warsaw Convention

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- 7.1 Where the goods are not carried under the EMS service and the carriage involves an ultimate destination or stop in a country (other than the country of departure) and the Warsaw Convention is applicable by law to the carriage, then the carriage is subject to the rules relating to liability established by the Convention (which limits the liability of Australia Post in respect of loss or damage to the goods). The Convention is set out in the *Civil Aviation (Liability of Carriers) Act 1959* (Cth).

## **8 Limitation of liability — where Warsaw Convention does not apply**

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8.1 Subject to clauses 6 and 19, in relation to carriage to which the Warsaw Convention does not apply, Australia Post shall not be liable to the consignor nor to any other person, company or corporation for an amount exceeding \$A50 for any loss or damage whatsoever suffered, or that may be suffered, in relation to the provision of the services pursuant to this Agreement.

## **9 Limitation of liability – general limitation**

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9.1 To the extent permitted by law, including without limitation the Australian Consumer Law, Australia Post shall not be liable to any person for:

- 9.1.1 failure to observe or perform any or all of its services or any of the terms and conditions of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by Australia Post including without limitation, strikes, lock-outs, labour disputes, acts of God, acts of nature, acts of governments or their agencies, fire, flood, storm, riots, power shortages or power failure, war, sabotage, or inability to obtain sufficient labour, raw materials, fuel or utilities;
- 9.1.2 any consequential or special damage or other indirect loss howsoever arising, including but not limited to, loss of profits, interest, income, utility or loss of market opportunities;
- 9.1.3 any loss or damage caused by the act, default or omission of the consignor, receiver or any other party including customs, government officials or any third party;
- 9.1.4 any electrical or magnetic injury, erasure or other such damage to electronic or photographic images or recordings in any form; or
- 9.1.5 any loss or damage caused by the nature of the goods or any defect or characteristic thereof, whether inherent or otherwise.

## **10 Applicability**

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10.1 Any clause of this Agreement which excludes or limits the liability of Australia Post in respect of the provision of services shall extend to protect Australia Post's employees, agents and sub-contractors and any or all of the services to be performed pursuant to this Agreement. For the purposes of, and to give effect to, this clause:

- 10.1.1 Australia Post shall hold the benefit of these conditions for its employees and agents and for any sub-contractor and its employees; and
- 10.1.2 all such employees and agents and sub-contractors shall be deemed to be parties to this Agreement .

## **11 Charges**

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11.1 The charges imposed by Australia Post for provision of the services shall be deemed to be payable at the time the goods are delivered into the possession of Australia Post by the consignor and whether the goods are delivered to the Consignee or not. The charges are refundable only at the sole discretion of Australia Post.

## **12 Sub-contractors**

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- 12.1 Australia Post reserves the right to sub-contract all or any of the services to be performed hereunder to a sub-contractor or independent contractor at its sole discretion.
- 12.2 Carriage or storage of goods may be affected in any manner whatsoever Australia Post shall decide notwithstanding any instructions to the contrary, expressed or implied, by the Consignor.
- 12.3 Australia Post reserves the right to deviate from the usual route of carriage where it is deemed necessary or desirable in the circumstances.

## **13 Delivery**

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- 13.1 Australia Post will endeavour to provide delivery in accordance with regular delivery schedules but shall not be liable for any delay in pick-up, transportation or delivery of goods regardless of the cause of such delay.

## **14 Lien**

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- 14.1 Australia Post shall have a general lien for all charges due or falling due to it by the consignor over the goods which are the subject of this Agreement or any goods of the Consignor which subsequently come into the possession of Australia Post for the provision of services. Australia Post shall have the right as the holder of the lien to sell the goods for any amount it deems acceptable and apply the proceeds thereof towards discharge of the lien and the cost of the sale without incurring liability to any person for any loss or damage thereby incurred.

## **15 Notification of claims**

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- 15.1 In circumstances where it is alleged that Australia Post is liable for any loss or damage to the goods, no compensation for such loss or damage shall be payable unless notice in writing has been given to Australia Post within 30 days of the date of delivery or of the date when delivery ought to have, or would have in the course of business, been effected.

## **16 Limitation of actions**

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- 16.1 Subject to clause 7 which shall be paramount, Australia Post shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within six months of the date of delivery, or where delivery has not been made, within six months of the date when delivery ought to have, or would have in the course of business, been effected.

## **17 Severance**

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- 17.1 All the terms and conditions of this Agreement shall be severable and no provision shall be affected by the invalidity of any provision except to the extent that such invalidity also renders such other provision invalid, and in the event of the invalidity of any provision this Agreement shall be interpreted and enforced as if the invalid provision was not contained in this Agreement.

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**18 Law**

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18.1 This Agreement is governed by, and shall be construed in accordance with, the laws in force in the State of Victoria and the courts and registries of courts in that State shall have jurisdiction in the event of any dispute.

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**19 Competition and Consumer Act**

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19.1 Notwithstanding the above terms and conditions, the provisions of this Agreement shall be read subject to any implied terms, conditions or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other applicable federal or state legislation. In addition, to the extent that such legislation permits a supplier to limit its liability for breach, the liability of Australia Post is limited to the re-supply of the service or the cost of re-supplying the service.

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**20 Merger**

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20.1 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances notwithstanding any breach of contract or of any conditions hereof by Australia Post.

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**21 Whole of Agreement**

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21.1 Subject to clause 1.1 this Agreement contains the whole of the agreement between the parties in relation to the special service and any representation or warranty made by either party prior to entering into this Agreement shall have no force or effect unless otherwise stated herein.